UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER
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ART UNIT	PAPER NUMBER
2155	

DATE MAILED: 12/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

PTO-90C (Rev. 10/03)

-- *The MAILING DATE of this communication appears on the cover sheet with the correspondence address* --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE _3_ MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on _30 December 2002_.

2a)☒ This action is **FINAL**.   2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) _1-32_ is/are pending in the application.

  4a) Of the above claim(s) _22-32_ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) _1-21_ is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on _06 July 2001_ is/are: a)☒ accepted or b)☐ objected to by the Examiner.

  Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

  Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

  a)☐ All b)☐ Some * c)☐ None of:

    1.☐ Certified copies of the priority documents have been received.

    2.☐ Certified copies of the priority documents have been received in Application No. _____.

    3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

  * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _12/30/02_.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

1.   Restriction to one of the following inventions is required under 35 U.S.C. 121:

> I.   Claims 1-21, drawn to a method for managing impact of IT events on
>
> business services, classified in class 709, subclass 224.
>
> II.   Claims 22-32, drawn to a system of enterprise systems management of
>
> events, classified in class 709, subclass 223.

The inventions are distinct, each from the other because of the following reasons:

2.   Inventions II and I are related as combination and subcombination. Inventions in

this relationship are distinct if it can be shown that (1) the combination as claimed does

not require the particulars of the subcombination as claimed for patentability, and (2)

that the subcombination has utility by itself or in other combinations (MPEP §

806.05(c)). In the instant case, the combination as claimed does not require the

particulars of the subcombination as claimed because Invention I's method of managing

impact of IT events is not particular to the event management system of II. The

subcombination has separate utility such as Invention I's method being used in a

different event management system than the one claimed in Invention II.

3.   Because these inventions are distinct for the reasons given above and have

acquired a separate status in the art as shown by their different classification, restriction

for examination purposes as indicated is proper.

4.   During a telephone conversation with Coe Miles (38559) on 11/16/04 a
provisional election was made without traverse to prosecute the invention of Group I,
claims 1-21. Affirmation of this election must be made by applicant in replying to this
Office action. Claims 22-32 are withdrawn from further consideration by the examiner,
37 CFR 1.142(b), as being drawn to a non-elected invention.

5.   Applicant is reminded that upon the cancellation of claims to a non-elected
invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one
or more of the currently named inventors is no longer an inventor of at least one claim
remaining in the application. Any amendment of inventorship must be accompanied by
a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Priority

6.   This application claims the benefit of 60/217,178 (07/10/2000).

Information Disclosure Statement

7.   The information disclosure statement (IDS) submitted on 1/03/03 has been
considered by the examiner. *(mailed by Applicants on 12/30/02)* DRL

Claim Objections

8.   Claim 9 is objected to because of the following informalities: Each referral to a
"peer-to-peer service processor" should be referenced as such for consistency and
clarity. In line 4, "the processor" should be "the peer-to-peer service processor". In

lines 5 and 8, "the service processor" should be "the peer-to-peer service processor".

Appropriate correction is required.

9.   Claim 10 is objected to because of the following informalities: In line 10, ODS

should be spelled out at least once for complete clarity. ODS is typically known as

Operational Data.Store. However, the specification specifies a different meaning.

Appropriate correction is required.

10.   Claim 11 is objected to because of the following informalities: Each referral to a

"peer-to-peer service processor" should be referenced as such for consistency and

clarity. In lines 4-5, "the service processor" should be "the peer-to-peer service

processor". Appropriate correction is required.

11.   Claim 11 is objected to because of the following informalities: In line 3, "the IT

Infrastructure" should be "in an IT Infrastructure", or a similar variation to make the claim

language clear. Appropriate correction is required.

12.   Claim 12 is objected to because of the following informalities: In line 1, "the high

end management backbone" should be "the high availability management backbone" or

just "the backbone". Note, Claims 8 and 10 use "the backbone". The chosen language

should be consistent through all these claims. Appropriate correction is required.

13.   Claim 15 is objected to because of the following informalities: In line 7, "east"

should be "each". Appropriate correction is required.

Claim Rejections - 35 USC § 102

14.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that

form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by
> another filed in the United States before the invention by the applicant for patent or (2) a patent
> granted on an application for patent by another filed in the United States before the invention by the
> applicant for patent, except that an international application filed under the treaty defined in section
> 351(a) shall have the effects for purposes of this subsection of an application filed in the United States
> only if the international application designated the United States and was published under Article 21(2)
> of such treaty in the English language.

15.   Claim 1, 3-6, 8-14, 16, 19, 20 and 21 are rejected under 35 U.S.C. 102(e) as

being anticipated by U.S. Patent 6,751,663 by Farrell et al. (Farrell).

16.   With respect to Claim 1, Farrell teaches In an Information Technology (IT)

Infrastructure wherein internal end-users or external customers rely on business

services to submit business transactions involving an orderly sequence of application

transactions along a plurality of IT Paths forming IT Aggregates, a method for managing

impact of IT events on business services which comprises the steps of: (a) configuring a

high availability management backbone (Col. 4 lines 31-67); (b) defining a plurality of

business objects (Col. 21 line 66 - Col. 22 line 10); (c) defining a plurality of IT objects

(Col. 3 lines 47-58) ; (d) monitoring the IT Paths used by the application transactions to

form monitoring information (Col. 3 lines.7-27); (e) monitoring the IT Aggregates to

supplement the monitoring information (Col. 19 lines 15-28 and Col. 23 lines 44-51);

(f)automatically abstracting the monitoring information into business impact information

(Col. 3 lines 47-58); and (g) using the business impact information to manage the

impact of IT events (Col. 31 lines 6-46).

17.   With respect to Claim 3, Farrell teaches all the limitations of Claim 1 and further

teaches the step of collating and optionally controlling underlying monitoring threads in

conjunction with distributed management policies (Col. 31 lines 20-45).

18.   With respect to Claim 4, Farrell teaches all the limitations of Claim 3 and further

teaches wherein at least one monitoring thread is an IT indicator (Col. 7 line 66 - Col. 9

line 30, specifically Col. 8 lines 2-12).

19.   With respect to Claim 5, Farrell teaches all the limitations of Claim 1 and further

teaches wherein step (g) further comprises the steps of: (i) translating an availability or

a performance impact ascertained for the business transaction on a given location in a

business impact statement for a plurality of dependent business user groups (Col. 31

lines 6-46 from the viewpoint of service level agreements correlating to dependent

business user groups); and (ii) translating the availability or the performance impact

ascertained for all the business transactions on all the possible locations in a business

impact statement for the business service (Col. 22 lines 11-54 - Particularly lines 11-19

and lines 35-40).

20.   With respect to Claim 6, Farrell teaches all the limitations of Claim 1 and further

teaches wherein step (g) further comprises the step of recording impact events with the

purpose of providing off-line reporting capabilities (Col. 3 line 59 - Col. 4 line 4).

21.   With respect to Claim 8, Farrell teaches all the limitations of Claim 8 and further

teaches, wherein the backbone comprises a low-end processing layer referred to as an

access layer, the method which further comprises the step of configuring the access

layer (Col. 4 lines 31-46).

22.   With respect to Claim 9, Farrell teaches all the limitations of Claim 7 and further

teaches the backbone comprises a plurality of production servers, the method which

further comprises the steps of: (i) installing a peer-to-peer service processor on each

production server (Col. 22 lines 37-43 - one of the flow data collectors or the FAP

processes); (ii) configuring the processor with a pre-packaged set of event structures,

data structures, control structures, actions, and rules, such that the service processor is

capable of capturing external events, using embedded instrumentation functions,

applying mapping methods, and enforcing distributed management policies (Co. 22

lines 11-34); (iii) auto-discovering or declaring IT Components owned by the service

processor (Col. 22 lines 11-18 and lines 27-34); and (iv) referencing other IT

Components in dependency relationships, wherein at least one first IT component is a

master resource and at least one second IT Component is a dependent resource (Col.

22 lines 11-54 particularly lines 11-27).

23.   With respect to Claim 10, Farrell teaches all the limitations of Claim 1 and further

teaches the backbone comprises an intermediate processing layer referred to as the

abstraction layer, the method which further comprises configuring the abstraction layer

(Col. 3 lines 47-58).

24.   With respect to Claim 11, Farrell teaches all the limitations of Claim 10 and further teaches the steps of: (i) installing at least two peer-to-peer server processors, including a first processor and a second processor (Col. 22 lines 37-43 - one of the flow data collectors or the FAP processes), the IT Infrastructure where a large number of service processors have been installed (Col. 4 lines 49-54), where the first processor is a primary processor and the second processor is a backup processor (Col. 19 lines 2-11); configuring at least one processor, referred to as a domain processor, with a pre-packaged set of event structures, data structures, and rules, such that the domain processor can deliver at least one abstraction service (Col. 32 lines 48-54); (iii) installing at least one additional peer-to-peer service processor referred to as an ODS processor in the IT Infrastructure (Col. 22 lines 20-34); (iv) configuring each ODS processor with a pre-packaged set of event structures, data structures, and rules, such that the ODS processor can deliver at least one object directory service (Col. 22 lines 20-34).

25.   With respect to Claim 12, Farrell teaches all the limitations of Claim 1 and further teaches wherein the high end management backbone comprises high-end processing layer referred to as a business layer, the method which further comprises the step of configuring the business layer (Col. 3 lines 31-46).

26.   With respect to Claim 13, Farrell teaches all the limitations of Claim 11 and further teaches the steps of (i) installing at least one additional peer-to-peer service processor in the IT Infrastructure; and (ii) configuring the service processor with a pre-packaged set of event structures, data structures, and rules, such that the service processor can deliver business impact statements (Col. 4 lines 31-46).

27.   With respect to Claim 14, Farrell teaches all the limitations of Claim 1 and further teaches the step of defining at least one of the business services (Col. 22 lines 11-34).

28.   With respect to Claim 16, Farrell teaches all the limitations of Claim 1 and further teaches the step of defining an IT Domain as a logical realm (Col. 5 lines 36-55).

29.   With respect to Claim 19, Farrell teaches all the limitations of Claim 1 and further teaches the step of branching each IT Path onto at least one IT Aggregate creating an auditable snapshot of the IT Path (Col. 9 lines 16-30).

30.   With respect to Claim 20, Farrell teaches all the limitations of Claim 1 and further teaches the step of defining an IT Indicator as an accretion point for a range of IT events carrying information related to a same operation parameter in a given management discipline (Col. 7 line 66 - Col. 9 line 30, specifically Col. 8 lines 2-12 and Col. 9 lines 16-30).

31.   With respect to Claim 21, Farrell teaches all the limitations of Claim 20 and further teaches the steps of: (i) associating the IT Indicator to an independent event source or a controlled event source (Col. 7 lines 16-21); (ii) setting appropriate event capture arguments for the IT indicator when associated to the independent event source (Col. 7 lines 16-31 - specifically the individual activity NARs that when aggregated, for the summary NAR); (iii) setting appropriate instrumentation arguments for the IT Indicator when associated to the controlled event source (Col. 7 lines 16-31 -the Examiner notes the controlled event source is an optional limitation in part (i)); (iv) auto-associating at least one service processor to the IT Indicator (Col. 18 lines 40-65); and (v) registering the IT Indicator onto the service processor (Col. 18 lines 56-65).

Claim Rejections - 35 USC § 103

32.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

33.   Claims 2 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over

Farrell in view of U.S. Patent 6,519,714 by Sweet et al. (Sweet).

34.   With respect to Claim 2, Farrell teaches all the limitations of Claim 1 and further

teaches the backbone capturing execution information along the IT Paths of application

transactions (Col. 3 lines 7-27). Farrell does not explicitly disclose remotely submitting

sample application transactions at selected source locations. Sweet teaches remotely

submitting sample application transactions at selected source locations in order to

evaluate computer resources involved with the application (Col. 2 lines 33-58). It would

have been obvious to one of ordinary skill in the art at the time the invention was made

to take the method disclosed by Farrell and modify it as indicated by Sweet such that

the method further comprises the step of remotely submitting sample application

transactions at selected source locations while requesting the backbone to capture

execution information along the IT Paths of each application transaction. One would be

motivated to have this as it allows administrators to efficiently manage computer

network resources (Col. 1 lines 14-26 of Sweet).

35.   With respect to Claim 7, Farrell teaches all the limitations of Claim 1 but does not

explicitly disclose the step of running simulation sessions in parallel of a real-time

session. Sweet teaches the step of running simulation sessions in parallel of a real-time session in evaluating computer resources (Col. 2 lines 11-20). It would have been obvious to one of ordinary skill in the art at the time the invention was made to take the method disclosed by Farrell and modify it as indicated by Sweet such that the method further comprises the step of running simulation sessions in parallel of a real-time session. One would be motivated to have this as it allows administrators to efficiently manage computer network resources (Col. 1 lines 14-26 of Sweet).

Allowable Subject Matter

36.   Claims 15, 17 and 18 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

37.   The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

38.   U.S. Patent 5,958,012 by Battat et al. "Network management system using virtual reality techniques to display and simulate navigation to network components" September 28, 1999. Discloses network management through virtual reality including a business process view that correlates computer assets to specific business interests.

39.   U.S. Patent 6,108,700 by Maccabee et al. "Application end-to-end response time measurement and decomposition" August 22, 2000. Discloses performance of application from end-user point of view including detailed or aggregate reporting.

40.   U.S. Patent 6,401,119 by Fuss et al. "Method and system for monitoring and managing network condition" June 4, 2002. Discloses functionality including determining network conditions for a particular area of a network and how the conditions may affect other processes in the organizational structure.

41.   U.S. Patent 6,442,557 by Buteau et al. "Evaluation of enterprise architecture model including relational database" August 27, 2002. Discloses a data structure for models linked together by entities used in determining the impact of information technology changes upon enterprise structure and function.

42.   U.S. Patent 6,670,973 by Hill et al. "System and method for representing the information technology infrastructure of an organization." December 30, 2003. Discloses provisioning representations of the information technology infrastructure of an organization in interactive and graphical formats.

43.   U.S. Patent 6,694,362 by Secor et al. "Method and system for network event impact analysis and correlation with network administrators, management policies and procedures." February 17, 2004. Discloses the use of data source adapters for interfacing with external data sources. The data is used by an impact analysis data structure for defining relationships between the enterprise-related data.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David Lazaro whose telephone number is 571-272-3986. The examiner can normally be reached on 8:30-5:00 M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hosain Alam can be reached on 571-272-3978. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

David Lazaro
December 6, 2004

HOSAIN ALAM
SUPERVISORY PATENT EXAMINER